IN THE HIGH COURT OF BOMABY AT GOA.

WRIT PETITION NO. 181 OF 2004.

Shri Guno Vinayak Gaude,
Aged 62 years, married, agriculturist,
r/o Kelbai Curti,
Ponda, Goa. ..... Petitioner.

Versus

1. State of Goa through the Chief Secretary,
   Secretariat,
   Panaji, Goa.

2. Village Panchayat of Curti,
   Khandepar, having its Office
   at Khandepar, Ponda, Goa.

3. Smt. Sharmila Alias Pushpa R. Kurtikar,
   residing at Kelbai Curti,
   Ponda, Goa.

4. The Asst. Engineer, Electricity Dept.,
   Curti, Ponda, Goa. ..... Respondents.

Mr. S. D. Padiyar, Advocate for the Petitioner.

Mr. P. A. Kamat, Government Advocate for respondents No. 1 and 4.

Mr. J. Godinho, Advocate for respondent No.2.

Ms. Susan Linhares, Advocate under Legal Aid Scheme for respondent No. 3

CORAM : B. H. MARLAPALLE, J.

DATE : 17th DECEMBER, 2004.

ORAL ORDER :

1. This Petition arises from the Judgment and Order dated 23.01.04, passed by the Director of Panchayats, State of Goa, in Panchayat Petition No. 7/99. The petitioner had filed Panchayat Petition No. 7/99, challenging the resolution dated 5.4.98 and 28.7.98 passed by the Village Panchayat of Curti, Khandepar under section 178 of the Goa Panchayat Raj Act, 1994. The petitioner had claimed that he held Mundkarial House No. 315 in the property bearing survey No. 16/4 of Ponda Taluka where he was residing alonwith his family members. The petitioner had permitted Smt. Sharmila alias Pushpa R. Kurtikar, Respondent No. 3 to use and occupy a room in the suit house located on the right side. Smt. Kurtikar had approached the Electricity Department to obtain a separate electricity connection for the room in her occupation. The petitioner objected the same vide his letter dated 16.10.98. However, the said objections were rejected by order dated 26.12.98 and from the said order he came to know that vide resolution dated 5.4.98, the Village Panchayat had alloted a separate house bearing No. 315/1 to the portion of the house occupied by Smt. Kurtikar. The petitioner, further came to know that the respondent Panchayat body through its order dated 29.07.98 had issued N.O.C. to the said Smt. Kurtikar to obtain electricity as well as water connection. Both these resolutions were challenged in the appeal before the Director of Panchayats.

2. Vide the impugned Judgment, the Director of Panchayats considered the scheme of section 178 and by relying upon a decision of this Court in the case of Shri Francisco Joaquim Fernandes (Writ Petition No. 480/1994), he held that once the resolutions were acted upon, they could not be suspended. The view taken by this Court in the case of Francisco, [1995(1) Goa Law Times, 302] was based on purportedly, by following the law laid down in the case of **Municipal Board, Kannauj** v. **The State of U.P. And others**, AIR 1971 SC 2147.

3. The scheme of section 178 of the Goa Panchayat Act, is similar to the scheme of section 308 of the Maharashtra Municipal Councils (Nagar Panchayats and Industrial Townships) Act, 1965 (for short called as the Maharashtra Municipalities Act). The full bench of this Court in the case of **Sanjay Govind Sapkal and others** v. **Collectorate of Dhule and Others**, 2003 (6) LJSOFT 106, considered the scheme of section 308 of the Maharashtra Municipalities Act and also the decision of the Supreme Court in the case of Municipal Board, Kannauj (supra) and held that the power to suspend the resolution was an interim arrangement and even if an order or resolution passed by Municipal Council is implemented, executed or given effect to, the power of section 308 (1) can be exercised and execution or implementation can be suspended by the Collector, if the conditions laid down in the said provision are shown to be present. This view taken by the full bench is applicable to the

provisions of section 178 of the Goa Panchayat Act as well and therefore the impugned order passed by the Director of Panchayats is unsustainable. The Director of Panchayats will have to make a report and submit to the Government and it is for the Government to hear all the respective parties after issuing notices and decide the legality of the resolution passed by the Village Panchayat.

4. In the result, this Petition succeeds. The impugned Judgment and Order passed by the Director of Panchayats, is hereby quashed and set aside. The Director of Panchayats is directed to take steps to make his report and place it before the Government for further appropriate steps. The Government shall decide the case after hearing all the parties concerned, as expeditiously as possible and preferably within a period of 3 months.

5. Rule made absolute accordingly with no order as to costs.

B. H. MARLAPALLE, J.

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